

**DECISION
of the Fifth Board of Appeal
of 29 September 2023**

In Case R 773/2023-5

Glashütter Uhrenbetrieb GmbH — Glashütte/Sa.

Altenberger Str. 1
01768 Glashütte
Germany

Applicant/Appellant

represented by CBH Rechtsanwälte Cornelius Bartenbach Haesemann Facility Partner,
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Appeal relating to European Union trade mark application No 18 727 034

THE FIFTH BOARD OF APPEAL

composed of V. Melgar (Chairperson), S. Rizzo (Rapporteur) and A. Pohlmann (Member)

Registrar: H. Dijkema

gives the following

Decision

Summary of the facts

- 1 By an application filed on 1 July 2022, Glashütter Uhrenbetrieb GmbH — Glashütte/Sa. ('the applicant') sought to register the figurative mark



in respect of the following goods and services, following an amendment of 29 August 2022:

Class 9: Downloadable virtual goods, namely computer programs featuring eyewear, clothing, headgear, bags, umbrellas, purses, belts, pens, pens, personal diaries, jewellery, cufflinks, key rings, chronographs, clocks, watches and their accessories for online or online virtual mountains; Downloadable virtual goods, namely alarm clocks, watch cases, watch bracelets, presentation cases for watches, clock movements, apparatus for timing sports events, works of art and accessories for online or online virtual mounds; downloadable digital files authentication by non-fungible tokens (NFTs); downloadable digital and virtual goods created by means of blockchain technology, namely eyewear, clothing, headgear, bags, umbrellas, purses, belts, pens, personal diaries, jewellery, cuff links, key rings, chronometers, chronographs, clocks, watches, alarm clocks, watch cases, watch cases, watch bands, chronographs, clocks, watches, alarm clocks, watch cases, watch cases, watch bands, watch bands, watchbands security tokens [encryption devices].

Class 35: Retail services connected with virtual goods, namely eyewear, clothing, headgear, bags, umbrellas, purses, belts, perfumes, pens, personal diaries, jewellery, cuff links, key rings, chronographs, clocks, watches and their accessories for use online; retail services connected with virtual goods, namely alarm clocks, watch cases, watch bracelets, cases for watches, watch movements, apparatus for timing sports events, works of art and accessories therefor for use online; online retail store services featuring virtual merchandise, namely eyewear, clothing, headgear, bags, umbrellas, belts, perfumes, pens, personal diaries, jewellery, cuff links, key rings, chronographs, clocks, watches and their accessories for use online; online retail store services featuring virtual merchandise, namely alarm clocks, watch cases, watch bracelets, cases for watches, clock movements, apparatus for timing sports events, works of art and accessories therefor for use online; retail services and on-line retail services in a virtual environment featuring downloadable digital files authentication by non-fungible tokens (NFTs), downloadable digital and virtual goods created by means of blockchain technology, namely eyewear articles, clothing articles, headwear, bags, umbrellas, belts, perfumes, pencils, chronometric apparatus for sports, chronometric instruments, chronometers, bags, umbrellas, belts, perfumes, pens, personal diaries, chippers for sports,

chronometric instruments, chronometric instruments marketing through placement of products in online games or virtual environments.

Class 41: Entertainmentservices, namely providing online non-downloadable virtual goods, namely eyewear, items of clothing, headgear, bags, umbrellas, purses, belts, perfumes, pens, personal diaries, jewellery, cuff links, key rings, chronographs, clocks, watches and their accessories for use in virtual environments; entertainment services, namely providing on-line non-downloadable virtual goods, namely alarm clocks, watch boxes, watch bracelets, cases for watches, clock movements, apparatus for timing sports events, works of art and accessories for use in virtual environments.

- 2 By letter of 21 September 2022, the examiner raised a provisional objection on the ground that the trade mark application did not satisfy the required conditions for registration in that it fell within the scope of Article 7(1)(b) and Article 7(2) EUTMR in respect of some of the goods and services, namely:

Class 9: Downloadable virtual products, namely computer programs offering chronometers, chronographs, clocks, watches and their accessories to be used online or in online virtual monals; Downloadable virtual goods, namely alarm clocks, watch cases, watch bracelets, presentation cases for watches, clock movements, apparatus for timing sports events and accessories for online or online virtual monds; downloadable digital and virtual goods created by means of blockchain technology, namely chronometers, chronographs, clocks, watches, alarm clocks, watch cases, watch cases, presentation cases for watches, movements for clocks, apparatus for timing sports events, and accessories for online or online virtual monds.

Class 35: Retail services connected with virtual products, namely chronometers, chronographs, clocks, watches and their accessories for use online; Retail services connected with virtual goods, namely alarm clocks, watch cases, watch straps, cases for watches, watch movements, apparatus for timing sports events, and accessories for use online; Online retail store services featuring virtual merchandise, namely chronometers, chronographs, clocks, watches and their accessories for use online; Online retail store services featuring virtual merchandise, namely alarm clocks, watch cases, watch straps, cases for watches, clock cases, clock movements, apparatus for timing sports events, and accessories for use online; Retail services and online retail services in a virtual environment featuring downloadable digital and virtual goods created by means of blockchain technology, namely chronometers, chronographs, clocks, watches, alarm clocks, watch cases, watch bands, presentation cases for watches, clock movements, apparatus for timing sports events, and their accessories for use online or in virtual watches.

Class 41: Entertainment services, namely providing on-line non-downloadable virtual goods, namely chronometers, chronographs, clocks, watches and accessories therefor for use in virtual environments; Entertainment services, namely providing on-line non-downloadable virtual goods, namely alarm clocks, watch boxes, watch bracelets, cases for watches, clock movements, apparatus for timing sports events, and accessories for use in virtual environments.

The examiner relied on the following reasons:

- In the present case, the relevant German, English or French-speaking consumer will understand the sign as having the following meaning: ‘Genuine Glashütte’.
 - The above meaning of the words ‘Glashütte’ and ‘ORIGINAL’, of which the mark is composed, is supported by the following dictionary references:
 - **Glashütte:** city of Saxony (Germany), located in the district of Suisse-Saxonne-Monts-Mcalibrifères-de l’Est, in the district of Dresden. It is very well known to be the coat of German horological instruments, and in particular for the manufacture of Glashütte watches (information taken from Wikipedia, on 28 July 2022, at the following address: <https://fr.wikipedia.org/wiki/Glash%C3%BCtte>);
 - **Original:** authentic (information taken from Larousse, 28 July 2022 at the following address: <https://www.larousse.fr/dictionnaires/francais/original/56496>).
 - The relevant public will simply perceive the sign ‘’, as a non-distinctive indication that the goods and services are, or are related to, genuine horological goods originating from Glashütte. Therefore, the relevant public will not tend to perceive in the sign any kind of indication of commercial origin, but merely information about the quality and origin of the goods and services.
 - Even if the sign contains stylised elements that give it a certain degree of stylisation, these elements are so negligible that they do not endow the mark as a whole with any distinctive character. As regards the way in which they are combined, there is nothing to suggest that the mark fulfils its essential function in relation to the goods and services for which protection is sought.
- 3 By e-communication dated 14 November 2022, the applicant disputed the examiner’s position. Its observations can be summarised as follows:
- The examiner rightly acknowledged that the town of Glashütte is well-known for the manufacture of watches. However, this statement is only valid in relation to real watches. it does not apply to virtual watches. The above mentioned is all the more truthful when one considers the specific features of the watch manufacturing sector.
 - As regards the graphic design of the sign, it must be noted that it is indeed composed of a combination of two different fonts. It is clear that the graphic design of the sign in question is markedly more original than the usual advertising and utility graphics.
- 4 By decision of 13 February 2023 (‘the contested decision’), the examiner refused the trade mark application pursuant to Article 7(1)(b) and Article 7(2) EUTMR for the goods and services listed in paragraph 3. The examiner relied on the following reasons:
- While the Office examined the various elements of the mark, it also established the meaning of the sign as a whole, as it would be perceived by the relevant public, namely: ‘Genuine Glashütte’.

- The expression ‘Glashütte original’ conveys a message relating to the value of the goods and services to customers, namely goods and services which are or are connected with genuine horological goods coming from Glashütte.
- Indeed, the message conveyed by the sign does not trigger any cognitive process, no mental steps necessary for the processing and understanding of the information or meaning of the word.
- At no point does the applicant dispute the meaning of the sign as mentioned above. It only contests the fact that the goods in question are virtual and not actual products and therefore that the town of Glashütte is not recognised for virtual products.
- In this specific case, the examiner assumes that the applicant mentions specific goods of the real world because the virtual version will represent or imitate the basic concepts of the equivalent goods of the real world. Although the goods applied for do not require an assessment under exactly the same conditions and in the same way as the corresponding real goods, these actual goods, and the way in which they are marketed, play an important role in the assessment. Depending on the circumstances, consumer perceptions of goods in the real world can be applied to equivalent virtual goods. The examiner considers that this is the case here.
- Furthermore, even though the mark applied for  contains figurative elements which confer on it a certain degree of stylisation, namely the use of a specific character, all those elements are so minimal in nature that they do not endow the mark applied for as a whole with any distinctive character. Those elements do not possess any feature, in particular as regards the way in which they are combined, allowing that trade mark to fulfil its essential function in relation to the goods and services covered by the trade mark application. It follows that the figurative elements of the contested sign are not sufficient to divert the attention of the relevant public from the message conveyed by the verbal element and cannot give the sign as a whole a minimum degree of distinctiveness.

Conclusion

- For the reasons above, and pursuant to Article 7(1)(b) and Article 7(2) EUTMR, EUTM application No 18 727 034 is hereby rejected in part. The application may proceed for the remaining goods and services.
- 5 On 12 April 2023, the applicant filed a notice of appeal against the contested decision in its entirety. The statement setting out the grounds of appeal was received on 13 June 2023.

Grounds of appeal

- 6 The applicant put forward the following arguments in its statement:
- The applicant does not dispute that Glashütte is a city where watches are manufactured. Nor does it dispute that the city of Glashütte enjoys a certain reputation in this context. However, that reputation concerns only actual watches,

that is to say physical watches which are the result of a very specific and complex manufacturing process.

- However, the contested goods and services in the present case have no connection with actual (physical) watches, their appearance and manufacturing process. On the contrary, they are goods of the virtual world, and therefore goods which are not comparable at all. The examiner did agree with the above, but at the same time assumed that the virtual version would represent or imitate the basic concepts of the equivalent real estate. However, even if that were the case, there is no reason to assume that the city of Glashütte has any comprehensible or obvious connection with that concept.
- In this context, it should be noted that the examiner did not further substantiate this assumption either. It merely established the thesis - and followed it - that the perception of the consumer of goods in the real world would be transposed to the corresponding virtual goods.
- These considerations do not take into account the considerable differences between real and virtual goods. In this regard, the applicant draws attention to the manufacturing processes that are fundamentally different from the real world's goods and goods from the virtual world. These differences are well known in the perception of consumers. In particular, the user of a virtual world property has no reason to assume that he would have a product from the real world. It follows that there is also no reason for the consumer to think that a product from the virtual world would have a significant relationship with a product from the real world.
- Therefore, the examiner's consideration that the perception of the consumer of goods in the real world can be transposed to virtual goods is in no way justified. What is decisive is the overriding conclusion that, due to the fundamental differences in all aspects between virtual and real world goods, there is no reason to find any similarities as regards the origin of the goods to be compared.
- In the present context, the relevant consumer therefore has no reason to assume that the town of Glashütte has a sufficiently specific link with the design and manufacture of virtual goods, in particular virtual watches.
- The renown of the town of Glashütte is concentrated and is therefore perfectly limited to the 'classic' watch industry as the manufacture of watches from the real world. The mere fact that watches may also exist in the virtual world does not alter this finding.
- In addition, the applicant draws attention to the fact that the examiner's assumption that there are parallels in the way of marketing goods from the real world and virtual world goods is also unfounded. The relevant consumer circles are fundamentally different and cannot be compared. In particular, consumers interested in virtual world products have fundamentally different expectations with regard to the product concerned from the real world. Nor do they buy their product from the manufacturer of a comparable physical product, but - as a virtual product - in the virtual world.

- Therefore, the marketing of a virtual product is based on fundamentally different marketing strategies, which have nothing in common with marketing strategies for comparable physical products.
- It should be added that the assumption that the public infers from the presumed renown of the city of Glashütte, for the manufacture of (physical) watches, the origin of Glashütte's virtual watches is also incorrect. This is all the more true given that the conclusions in question can only be the result of analytical reflection steps. However, the assessment of a trade mark must be carried out on the basis of the trade mark as it is presented to the public.
- Moreover, it is settled case-law that there is no need for an analysis. In the present case, when the examiner refers to the reputation of the town of Glashütte for watches in order to justify the allegedly descriptive character, the additional assumption that the public will conclude that there are parallels with the city of Glashütte as the place of manufacture of physical watches can only be the result of additional analytical reflection steps.
- It follows from the foregoing considerations that all the factors relevant to the assessment of a descriptive character are inappropriate for attributing a descriptive character to the mark in question as regards the goods and services at issue in the present case.
- Apart from this, the applicant points out that, according to its own practice, the Office considers the trade mark to  be eligible for protection, even for actual (physical) watches in Class 14. In that regard, it draws attention to the registration of EUTM No 4 821 773  which claims the following goods in Class 14:

Class 14: Watches, in particular wristwatches, watch parts, watch movements, chronometers, chronometric instruments, evenings for watches and models of escapions; cases for watches, chrono micrometers for watches; precious metals and their alloys and goods in precious metals or plate therewith (included in Class 14); jewellery; jewellery, precious stones.
- In the context of EUTM registration No 4 821 773, a fortiori, a refusal of the present trade mark application for goods and services in the virtual world related to horological instruments in Classes 9, 35 and 41 cannot convince, as it would be inconsistent to refuse a trade mark for goods and services in the virtual world related to horological instruments in Classes 9, 35 and 41, while at the same time an identical trade mark was registered for goods and services in real world related to horological instruments.
- Irrespective of this, the mark must be registered because of its particular configuration, as reproduced below, which has a high degree of originality:



- The trade mark applied for conveys the typical image of a distinctive trade mark on account of its very configuration, which has a high degree of memorisation and recognition. This is supported by the particularities of the configuration of the sign at issue. The examiner wrongly disregarded these particularities and consequently rejected the mark as ‘banal and commonplace’.
- It follows from all of the foregoing that a sufficient degree of distinctiveness cannot be denied to the mark in question, in particular as regards the contested goods and services.

Reasons for the decision

- 7 Unless expressly stated otherwise, all mentions of the EUTMR are references to EUTMR (EU) 2017/1001 (OJ 2017 L 154, p. 1) codifying Regulation (EC) No 207/2009 as amended.
- 8 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible.

Article 7(1)(b)EUTMR

- 9 Pursuant to Article 7(1)(b) and Article 7(2) EUTMR, trade marks which are devoid of any distinctive character, even in part of the European Union, shall not be registered.
- 10 For a trade mark to possess distinctive character for the purposes of Article 7(1)(b) EUTMR, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (14/09/2022, T-367/21 and T-432/21, READY 4YOU (fig.), EU:T:2022:552, § 18).

Relevant public and degree of attention

- 11 It is settled case-law that the distinctive character of a trade mark must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of the relevant public (15/03/2023, T-178/22, Fucking awesome, EU:T:2023:131, § 18; 14/09/2022, T-367/21 & T-432/21, READY 4YOU (fig.), EU:T:2022:552, § 19; 12/02/2004, C-363/99, Postkantoor, EU:C:2004:86, § 34).
- 12 Consequently, in the context of that analysis, it is necessary first to define the relevant public and territory, then to examine the perception of the mark applied for by that public and, finally, to assess the distinctive character of that mark in relation to the goods or services in question (15/03/2023, T-178/22, Fucking awesome, EU:T:2023:131, § 20).
- 13 The targeted public of downloadable virtual goods in Class 9, including those created using blockchain technology, would be mainly composed of users of online virtual worlds, players and amateurs of online games, as well as people who are interested in the virtual goods related to watches, clocks, alarm clocks, chronometers, chronographs, timing apparatus, and their accessories.

- 14 As regards retail services in Class 35, including online retail services, offering these virtual goods, the relevant public would mainly be the public at large, consisting of online consumers, be they players, virtual monetary enthusiasts or other persons seeking to purchase virtual products related to watches, clocks, alarm clocks, chronometers, chronographs, timing apparatus, and their accessories.
- 15 As regards the entertainment services in Class 41, offering access to those virtual goods in virtual environments, the relevant public is again the general public.
- 16 The level of attention of the general public would be average to high, in particular for virtual world users and online games. They may be very attentive to the details and functionalities of watches and their virtual accessories.
- 17 Furthermore, due to the nature of these goods and services, related to online virtual worlds, it cannot be excluded that they are also directed at a professional and specialised public. For that public, the level of attention would be higher than average.
- 18 It should be noted that even though the attention of the relevant public may be above average for part of the goods and services in question, this cannot have a decisive influence on the legal criteria used to assess the distinctiveness of a sign. Although it is true that the level of attention of the relevant specialist public is, by definition, higher than that of the average consumer, it does not necessarily follow that a weaker distinctive character of a sign is sufficient where the relevant public is specialist (12/07/2012, C-311/11 P, *Wir Machen das Besondere einfach*, EU:C:2012:460, § 48).
- 19 Pursuant to Article 7(2) EUTMR, Article 7(1)(b) EUTMR is to apply notwithstanding that the grounds of non-registrability obtain in only part of the Union.
- 20 Given that at least a significant part of the German public will know the town of Glashütte and understand the meaning of the term ORIGINAL, the Board deems it appropriate to take this part of the relevant public into account.

The meaning of the sign and the distinctiveness of the sign in relation to the relevant goods and services

- 21 According to settled case-law, the average consumer normally perceives a mark as a whole and does not analyse its various elements. Thus, in order to assess whether or not a trade mark has distinctive character, the overall impression given by it must be considered, which may, however, imply first examining, in the context of that global assessment, each of the individual elements of which that mark is composed (26/05/2016, T-331/15, *The Snack Company*, EU:T:2016:323, § 28; 11/04/2013, T-294/10, *Carbon Green*, EU:T:2002:80, § 17).
- 22 In the notification of the Office's provisional refusal, which forms part of the contested decision, the examiner convincingly set out the meaning of each word, taken separately, as well as the meaning of their combination and supported its conclusions by references to online dictionaries.
- 23 In particular, the examiner correctly found that the word 'Glashütte' refers to a German town in Saxony near Dresden, famous for the manufacture of high quality watches, while

the word ‘ORIGINAL’ evokes, at least for a significant part of the relevant German public, the idea of authenticity and loyalty to the original.

- 24 Thus, the examiner also established the meaning of the sign as a whole, as it would be perceived by the relevant public, namely: ‘Genuine Glashütte’.
- 25 In relation to the goods and services at issue, the examiner considered that the sign ‘conveys a message relating to the value of the goods and services to customers, namely goods and services which are, or are connected with, genuine horological goods coming from Glashütte’.
- 26 Not only does the applicant not dispute the meaning of the sign attributed by the examiner, but it also acknowledges that the German city of Glashütte ‘enjoys a certain reputation’ for the manufacture of watches.
- 27 However, it argues that ‘this reputation concerns only real watches’, whereas the contested goods and services have no connection with actual (physical) watches, their appearance and manufacturing process. The main argument of the applicant therefore lies in the virtual nature of the goods in question, claiming that the reputation of the city of Glashütte is not based on virtual products.
- 28 The Board cannot accept the applicant’s arguments for the following reasons.
- 29 As a preliminary remark, it should be recalled that the general principles concerning the assessment of the distinctiveness of a sign are fully applicable to trade marks filed for virtual goods and virtual services.
- 30 The examination of the absolute grounds for refusal must be carried out in respect of each of the goods or services in respect of which registration of a trade mark is sought. On the other hand, the decision by which the competent authority refuses registration of a trade mark must, in principle, state reasons in respect of each of those goods or services (23/09/2015, T-633/13, Infosecurity, EU:T:2015:674, § 45 and the case-law cited; 18/03/2010, 282/09-P, P@yweb card/Payweb card, EU:C:2010:153, § 37, and the case-law cited therein; 22/11/2011, T-275/10, MPAY24, EU:T:2011:683, § 52).
- 31 Nevertheless, the competent authority may confine itself to stating general reasons for all of the goods or services concerned where the same ground for refusal is invoked for a category or group of goods or services (18/03/2010, C-282/09 P, P@yweb card/Payweb card, EU:C:2010:153, § 38).
- 32 Thus, the placement of the goods and services at issue into one or more groups or categories must be carried out in particular on the basis of the characteristics which are common to them and which are relevant for the analysis of whether or not a specific absolute ground for refusal may apply to the mark applied for in respect of those goods and services.
- 33 In the present case, all the goods and services claimed, however virtual as they may be, expressly refer to horological goods and their accessories, which is a common characteristic relevant to the analysis of the distinctive character of the sign in question and allows general reasoning for all the goods and services concerned.

- 34 Virtual products refer to non-physical items traded as such for use in online and/or virtual environments. They can simply represent products from the real world, represent and emigrate the functions of real products or represent objects that have no equivalent in the real world.
- 35 For at least a non-negligible part of the relevant public, the sign ‘Glashütte ORIGINAL’ evokes outstanding know-how and reputation of excellence in the clock sector.
- 36 In the present case, the goods and services concerned are all virtual goods relating to horological goods and their accessories, as well as in the retailing and making available of those virtual goods.
- 37 Therefore, the sign ‘Glashütte ORIGINAL’ will be used in relation to virtual goods (and their retail and availability) depicting exactly the same goods for which the name of the city of Glashütte is reputed.
- 38 In such a scenario, when the sign in question is applied to the goods and services at issue, the use of the Glashütte geographical indication is likely to give rise to positive feelings among the relevant public, through the transfer of the quality image of physical goods to virtual goods. Consumers who already know the town of Glashütte as a traditional high-quality horological symbol will naturally associate the sign ‘Glashütte ORIGINAL’ with quality and authenticity, even in the context of virtual products.
- 39 This transfer of a quality image enables consumers to perceive the goods and services claimed as a logical extension of the reputation of the city of Glashütte in relation to horological products, offering the same guarantee of quality and reliability as they expect physical products. It reinforces consumer confidence in the value of virtual products by capitalising on the well-established reputation of the city of Glashütte in the field of watches.
- 40 Thus, the sign ‘Glashütte ORIGINAL’ has the potential to create a significant positive influence by reassuring consumers and encouraging them to consider virtual products as quality products, in line with the excellence associated with the word ‘Glashütte’ in the world of watches.
- 41 In such a scenario, the sign at issue would not be perceived by the consumer as an indication of commercial origin for virtual goods (and their retail and provision) equivalent to the physical goods for which the city of Glashütte is known, beyond the high quality promotional information conveyed by the reference to genuine goods in that city.
- 42 Accordingly, the examiner was right to find that that mark was devoid of any distinctive character within the meaning of Article 7(1)(b) EUTMR.
- 43 These findings cannot be called into question by the applicant’s argument that ‘the trade mark is to be registered because of its particular configuration’. Although the sign for which protection is sought contains certain figurative elements, namely that the word ‘Glashütte’ is written in slightly stylised letters and placed above the term ‘ORIGINAL’, those elements are so insignificant that they do not endow the trade mark as a whole with any distinctive character. Those elements do not display, in their combination, any feature enabling the trade mark to fulfil its essential function in relation to the goods and

services for which protection is sought. The elements are rather banal and consist of simple and purely decorative shapes which, in the overall assessment, disappear in relation to the textual elements devoid of distinctive character of the trade mark.

- 44 Finally, the applicant's argument that other European Union trade marks including the terms 'Glashütte' and 'ORIGINAL' have been registered does not call into question the Board's findings either.
- 45 Decisions concerning registration of a sign as a European Union trade mark which EUIPO is led to take under the EUTMR are adopted in the exercise of circumscribed powers and are not a matter of discretion. Accordingly, the legality of EUIPO decisions must be assessed solely on the basis of that regulation, as interpreted by the EU judicature, and not on the basis of a previous decision-making practice of those boards (26/04/2007, 412/05-P, Travatan, EU:C:2007:252, § 65; 03/07/2013, 243/12-, Aloha 100 % natural, EU:T:2013:344, § 43).
- 46 Furthermore, the earlier mark relied on by the applicant was adopted by a decision of EUIPO examiners. However, it is sufficient to note that the Board of Appeal cannot in any way be bound by the decisions adopted by them. In particular, it would be contrary to the Board of Appeal's purpose for its jurisdiction to be restricted by the requirement to respect the decisions of the first-instance adjudicating bodies of EUIPO (28/06/2017, T-479/16, AROMASENSATIONS (fig.), EU:T:2017:441, § 42; 09/11/2016, T-290/15, SMARTER TRAVEL (fig.), EU:T:2016:651, § 73 and the case-law cited therein).
- 47 Therefore, for the reasons given above and those invoked in the contested decision, which the Board endorses, the examiner rightly refused registration of the trade mark in respect of all the goods and services forming the subject-matter of the appeal on the basis of Article 7(1)(b) and Article 7(2) EUTMR.
- 48 In light of the foregoing, the appeal is dismissed.

Order

On those grounds,

The Board

hereby:

Dismisses the action;

Signed

V. Melgar

Signed

S. Rizzo

Signed

A. Pohlmann

Registrar:

Signed

H. Dijkema

